Supreme Court, U.S.
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No. 00-1750

IN THE

Supreme Court of the United States

OSCAR MARTINEZ, as next friend for Melissa Martinez, a minor, and BLASA MARTINEZ, as next friend for Melissa Martinez, a minor,

Petitioners,

v.

CRYSTAL CITY INDEPENDENT SCHOOL DISTRICT, RODOLFO ESPINOSA, JANIE RAMIREZ and JOSE GILBERTO RAMIREZ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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I

REASONS FOR DENYING THE WRIT

The Court of Appeals properly affirmed the dismissal of Petitioners' claims against Jose Gilberto Ramirez in his official capacity.

The Court of Appeals properly affirmed the dismissal of the official capacity claims against Janie Ramirez and Rodolfo Espinosa.

The Court of Appeals properly affirmed summary judgment in favor of Crystal City Independent School District.

The United States Court of Appeals has *not* entered a decision in conflict with the decision of another United States Court of Appeals in this matter; it has *not* decided an important federal question in a way that conflicts with a decision of the Supreme Court of Texas; it has *not* so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power. Rule 10(a), 28 U.S.C. Rules of the Supreme Court. In fact, it has followed clearly established laws and standards which are adequate to protect school children's constitutional rights.

STATEMENT OF THE CASE

A. Nature of Case and Disposition Below.

Petitioners Oscar Martinez and Blasa Martinez, as next friends of their daughter Melissa Martinez brought suit against the Crystal City Independent School District,

Superintendent Rodolfo Espinosa; Vice-Principal Janie Ramirez; Manual Lozano, Principal at Fly Junior High School, and Jose Gilberto Ramirez, alleging wrongful conduct on the part of defendants arising from an alleged sexual relationship between Melissa Martinez and her former teacher, Jose Gilberto Ramirez while she was a student of Crystal City Independent School District in the 1995-1996 school year (2 R 223).[1]

Petitioners sued Crystal City Independent School District and Rodolfo Espinosa, in his official and individual capacity; Manual Lozano, in his official and individual capacity; Janie Ramirez, Vice-Principal of Fly Junior High School, in her official capacity; and Jose Gilberto Ramirez in his official and individual capacity (2 R 223). Manual Lozano was subsequently dismissed from the lawsuit (2 R 220). Petitioners alleged violations of Melissa Martinez' constitutional right to "bodily integrity" under 42 U.S.C. § 1983, as well as tort claims of negligence and intentional infliction of emotional distress (2 R 223).

Respondents, as Defendants below, moved for summary judgment on the Martinez' claims, which the district court granted on September 22, 1999, as to Crystal City I.S.D. (4 R 787). On that same date, the district court signed an Order Accepting Report and Recommendation of United States Magistrate Judge, dismissing Petitioners' claims against Rodolfo Espinosa, Janie Ramirez and Jose Gilberto Ramirez in their official capacities (4 R 802). On January 13, 2000 the district court denied Petitioner's Motion to

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1. References to the Record on Appeal are designated by the number of the record volume assigned by the Clerk of the Court of Appeals followed by "R" and the pertinent page number(s).

Reconsider (4 R 847). Final Judgment was granted on that date severing Petitioners' claims against Jose Gilberto Ramirez (4 R 849). Jose Gilberto Ramirez was not a party to the motion for summary judgment and is not a party to the appeal. He did not file an answer herein until June 8, 2000 (4 R 875).

The United States Court of Appeals affirmed the district court on February 24, 2001.

B. Statement of Facts.

On or about November 21, 1995, Oscar Martinez, Plaintiff Melissa Martinez's father, and Police Chief Contreras met with Superintendent Espinosa in Espinosa's office (2 R 271-272, 290). During the meeting, they discussed Oscar Martinez's concerns that: (1) the teacher/band director Jose Gilberto Ramirez had given gifts to Plaintiff Melissa Martinez which Oscar Martinez considered inappropriate; and (2) that the teacher/band director had told Plaintiff Melissa Martinez that he wanted to marry her when she turned 18 years old (2 R 271-272, 290). Oscar Martinez informed Espinosa that he did not believe there was a sexual relationship between his daughter and the teacher, but he was concerned about the gifts and the statement (2 R 272).

On that same day, on or about November 21, 1995, Superintendent Espinosa:

— Advised Oscar Martinez that he would look into the matter. He immediately began an investigation by talking to the Ramirez' supervisors and other school district employees (2 R 272, 290, 293, 294-295).

— Called and spoke to Greg Cortez at Child Protective Services to report Oscar Martinez's concerns (2 R 272).

— Agreed with Police Chief Luis Contreras that the Crystal City Police Department would conduct an investigation (2 R 272, 290, 293).

— Held a conference with Ramirez and his supervisor, Jesse Maldonado, to discuss Oscar Martinez's concerns and obtain a response from the teacher. During the conference, Ramirez denied an inappropriate relationship between him and the student, and explained that the gifts were given to the student as a motivational tool. Superintendent Espinosa then gave directives to Ramirez to cease giving gifts to Melissa Martinez, to not be alone with her, to limit his contact with her to that which was absolutely necessary, and to avoid any conduct or contact with her that could be perceived as inappropriate (2 R 272, 300).

— Held separate conferences with the Ramirez' supervisors, Jesse Maldonado and Jorge Ybarra, as well as with High School Counselor Carmen Gallegos, to advise them of Oscar Martinez's concerns, to find out if they had heard of or seen an inappropriate conduct between the teacher and the student, to inform them of the directives given to the teacher, and to direct them to immediately report to him if they saw or heard of any inappropriate conduct. Mr. Maldonado, Mr. Ybarra, and Ms. Gallegos all denied having witnessed or heard of any improper conduct between Plaintiff Melissa Martinez and the teacher (2 R 273, 300, 302-303).

— Directed Counselor Gallegos to counsel with the student and also make arrangements for Maria C. Cruz, a private clinical psychologist, to visit with the student at the school district's expense (2 R 273, 303, 306-307).

After the above steps were taken, Superintendent Espinosa began hearing more rumors in January of 1996, concerning Jose Gilberto Ramirez and Melissa Martinez (2 R 273). As a result of this, Espinosa took the following action:

— Held additional conferences with the teacher and reiterated his earlier directives. The teacher continued to deny any inappropriate conduct with the student (2 R 274).

— Advised Oscar Martinez of the steps that the school district was taking as well as the results of the school district's investigation (2 R 291, 296-297).

— Met with Police Chief Contreras regarding the status of the Crystal City Police Department's investigation and learned that the Crystal City Police Department's investigation into inappropriate conduct on the teacher's part was inconclusive (2 R 274, 291).

— Suspended the teacher on January 29, 1996, pending a full administrative investigation, just 34 school days after his initial meeting with Oscar Martinez (2 R 274, 278).

— On February 1, 1996, issued directives to High School Principal Dr. John Fiol, Junior High School

Principal Jesse Maldonado, and Band Director George Ybarra to investigate the rumors of fraternization between the teacher and the student, and to specifically investigate the report of the student receiving gifts from the teacher, as well as rumors of the student receiving car rides from the teacher and the teacher paying excessive attention to the student as well as two verbal confrontations between Martinez and Janie Ramirez. They were directed to submit their reports to Superintendent Espinosa by no later than February 8, 1996 (2 R 275, 279).

— On February 8, 1997, Dr. Fiol reported to Superintendent Espinosa that his investigation showed that fraternization had occurred and inappropriate comments had been made to the student. Jesse Maldonado also reported to Espinosa that his interviews of students revealed that the students were only aware of the rumors, but not of any facts to substantiate the rumors. This administrative investigation was inconclusive as to the existence of a sexual relationship between the teacher and the student (2 R 275, 281, 301).

— On or about February 11, 1996, Superintendent Espinosa retained legal counsel on behalf of the school district to conduct another investigation and to advise the school district on the matter (2 R 275).

— The teacher Ramirez and the student Melissa Martinez continued to deny the existence of any improper conduct between them (2 R 275, 303-304, 309-310, 317-318).

— At the conclusion of his investigations, Superintendent Espinosa recommended to the school district's Board of Trustees on or about April 3, 1996, that the employment contract of the teacher, Jose Gilberto Ramirez, be terminated. Espinosa also provided notice of this recommendation to Jose Gilberto Ramirez, as well as a directive for him to continue to stay away from the school district's property and facilities (2 R 275).

— Based upon Defendant Espinosa's recommendation, the school district's Board of Trustees terminated the employment of Jose Gilberto Ramirez on May 15, 1996. From the date the teacher was suspended with pay on January 29, 1996, until his termination, Jose Gilberto Ramirez was not at school or had any known contact with any student of the school district (2 R 276, 282).

At all times, when questioned by the school district's personnel, both the student, Melissa Martinez, and the teacher, Jose Gilberto Ramirez, denied any sexual relationship whatsoever (2 R 275, 303-304, 309-310, 317-318).

— In November of 1995, the student's father confronted the student about the teacher; and she did not tell her father that she'd been having sex with the teacher. When she was asked, she denied the relationship (2 R 309-310).

— The student never told her father that she had sex with the teacher, and she didn't tell her mother until February or March of 1996. When she told her mother, the teacher had already been suspended from his employment by Superintendent Espinosa (2 R 274, 311-313).

— Although the teacher did not threaten the student if she told about the relationship, she tried to hide the relationship from her parents. She was not truthful to her parents when she was asked about the relationship. When asked by other students about the affair, she denied the relationship (2 R 314).

— The student never told the teacher's wife, Appellee Janie Ramirez, that she was having sex with the teacher (2 R 315-316).

— When the student talked with the superintendent, Rodolfo Espinosa, and was asked by him if the teacher had done anything inappropriate to her, she denied it. Further she does not know of any individual who advised the superintendent that she was having sex with the teacher (2 R 317-318).

— As to the appropriateness of the superintendent's actions, the student stated that she knew that an investigation was done by the school, she was interviewed more than once as part of the investigation, but that she did not remember ever telling anyone at the school that she was having sex with the teacher. She knew that the superintendent had conferred with her father about the matter and knew that the teacher lost his job from the school over the relationship (2 R 319-320).

— The student admitted that she never did talk with Principal Jesse Maldonado about the teacher, never talked to any school board member and never told the band director, Mr. Ybarra, about the teacher's conduct (2 R 321-322).

— The student admitted that when asked by a friend (Rolando O.) whether or not she was having sex with the teacher, she again denied the relationship (2 R 323-324).

— The student related that she received poems from the teacher, but that she did not show them to her father or to any school official (2 R 326-327).

— When the student talked with High School Counselor Carmen Gallegos, Ms. Gallegos told her to tell the truth about the teacher, but she did not tell Ms. Gallegos that she was having a sexual relationship with the teacher (2 R 328-330).

ARGUMENT AND AUTHORITIES

I. The Court of Appeals properly affirmed the dismissal of Petitioners' claims against Jose Gilberto Ramirez in his official capacity.

Petitioners complain that the district court improperly sua sponte dismissed the official capacity claim against Jose Gilberto Ramirez. However, Petitioners have waived any right to complain of said dismissal, which arose out of the Report, Recommendation, and Order of the United States Magistrate Judge (4 R 774, 776-777). The district court accepted such recommendation, noting that Petitioners did not object to it (4 R 802). In that situation, no de novo review of said recommendation is required and the district court needed only to review it to determine if it was clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1) (1999), *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). Further, appellate review

is limited to plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc); *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

The order accepting the magistrate's recommendation that the claims against the individuals in their official capacities be dismissed was signed on September 22, 1999 (4 R 802), the same day that the memorandum opinion granting Respondents' motion for summary judgment was signed (4 R 787-801). Both were filed on September 24, 1999 (4 R 787, 802). Petitioners' Motion to Reconsider Opinion and Order is silent as to the dismissal of the official capacity claim against Jose Gilberto Ramirez as is Petitioners' Notice of Appeal. *See* FED. R. APP. P. 3(c).

Having acquiesced in that dismissal, Petitioners should not be heard to complain about it on appeal.

In any event, Petitioners' suit against Respondents Rodolfo Espinosa, Janie Ramirez, and Jose Gilberto Ramirez in their official capacities was simply another method of pleading this case against the school district. "Actions for damage against a party in his official capacity are, in essence, actions against the governmental entity of which the officer is an agent." *Familias Unidas v. Briscoe*, 619 F.2d 391, 403 (5th Cir. 1980). As this Court has explained, "[o]fficial-capacity suits . . . 'generally represent only another way of pleading an action against an entity of which the officer is an agent.' " *Kentucky v. Graham*, 473 U.S. 159, 165 (1985), quoting *Monell v. New York City Dep't of Social Services*, 436 U.S. 658, 690 n.55 (1978). Therefore, in reality, the official capacity suit against these three individuals was merely another way to plead this suit against the Crystal City Independent School District, which was already a party.

Claims against these individuals "in [their] official capacity are redundant and unnecessary because any disputed issues that must be resolved in conjunction with the official capacity claims are the same as those requiring resolution in the claims against the school district." *Doe v. Rains Indep. Sch. Dist.*, 865 F. Supp. 375, 378 (E.D. Tex. 1994), *rev'd on other grounds*, 66 F.3d 1402 (5th Cir. 1995) and 76 F.3d 666 (5th Cir. 1996); citing *Doe v. Douglas County School District Re-1*, 775 F. Supp. 1414, 1416-17 (D. Colo. 1991). *See also Revontini v. Pasadena Indep. Sch. Dist.*, 981 F. Supp. 1013, 1021 n.14 (S.D. Tex. 1997) (dismissing claims against school officials in their official capacities because such claims are duplicative of claims against the school district). Because the claims against Rodolfo Espinosa, Janie Ramirez, and Jose Gilberto Ramirez, in their official capacities, were the same as the claims against Defendant Crystal City Independent School District, the claims were properly dismissed pursuant to Rule 12(b)(6). Suing public officials in their official capacities for acts performed within the scope of their authority, is equivalent to suing the school district. *See Kentucky*, 473 U.S. at 166; *Monell*, 436 U.S at 690 n.55 (1988). Therefore such claims were properly dismissed.

Petitioners further confuse their official capacity claims against Jose Gilberto Ramirez with their individual capacity claims. The latter have been severed out and are still pending in the district court (4 R 849). The dismissal of the official capacity claims was not to benefit him. It was simply to remove redundant complaints against the school district.

II. The Court of Appeals properly affirmed the dismissal of the official capacity claims against Janie Ramirez and Rodolfo Espinosa.

1. *Janie Ramirez*

Petitioners complain that Janie Ramirez was not entitled to a grant of qualified immunity. However, the district court did *not* grant her qualified immunity. She was not sued in her individual capacity, and the court's acceptance of the magistrate's recommendation that she, along with the other individuals sued, be dismissed in her official capacity completely resolved any claims against her (4 R 787, 795). Petitioners' discussion of Janie Ramirez' alleged role herein is entirely off point. Her liability in her individual capacity was never at issue, and therefore there was never any reason to consider her entitlement to qualified immunity, which is a presumption to be overcame by plaintiffs suing governmental employees in their individual capacities. *See Pfannistiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990). There is no plain error in the district court's adoption of the magistrate judge's recommendation to dismiss those claims.

2. *Rodolfo Espinosa*

Qualified immunity shields government officials performing discretionary functions "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson*, 483 U.S. at 638. When sued in their individual capacities, governmental employees are entitled to a presumption of qualified immunity from suit. *Id.* To overcome this presumption, Appellants have the burden to

prove that no reasonable official could have considered the conduct of the governmental official to be lawful, under the circumstances known to him at the time. *See Anderson*, 483 U.S. at 640-41. The reasonableness inquiry of the official's conduct is measured with reference to the law as it existed at the time of the conduct in question. *See King v. Chide*, 974 F.2d 653, 657 (5th Cir. 1992). "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity." *Pfannstiel*, 918 F.2d at 1183.

In this case, qualified immunity for Superintendent Espinosa rests on whether reasonable government officials in the shoes of this superintendent would have known that any of his actions violated clearly established law. As there is no respondent superior or vicarious liability under 42 U.S.C. § 1983 (*Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 122 (1992); *Monell*, 436 U.S. at 691-94), the Plaintiff Melissa Martinez must show that Espinosa personally caused or participated in the deprivation of a federal right. *Thompkins v. Belt*, 828 F.2d 298, 303-04 (5th Cir. 1987).

The summary judgment evidenced establishes that Superintendent Espinosa, as the superintendent of the school district, immediately began an investigation and took prompt remedial action when he first learned of the possibility of inappropriate conduct between the band director/teacher, Jose Gilberto Ramirez, and the Student Melissa Martinez. The summary judgment evidence conclusively established the reasonableness of actions taken by Espinosa based upon the information he was provided as the superintendent of the school district. He took prompt, appropriate remedial action and therefore, was entitled to qualified immunity against Plaintiff's claims.

Further, taking into account the information that was available to Superintendent Espinosa, and the information that was intentionally being withheld from the school district by Melissa Martinez and Jose Gilberto Ramirez, Espinosa took prompt, effective action and was not consciously indifferent to the rights of Plaintiff Melissa Martinez.

Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 456-58 (5th Cir. 1994), cited by the Appellants, is distinguishable. In *Doe* the Fifth Circuit concluded that a high school principal, although not the school superintendent, should be denied qualified immunity because there was summary judgment evidence that he received numerous reports of the teacher's inappropriate conduct with female students over the years and with the plaintiff specifically, that he regularly dismissed the reports and parents' complaints, that he did not record the incidents, and that he declined to discuss the reports with the school superintendent, the teacher, the student or her parents. 15 F.3d at 457. The school superintendent in *Doe* by contrast, was entitled to qualified immunity because the record showed he instructed the principal to speak with the teacher about reports of misconduct, personally investigated a related report, met with the teacher, reprimanded him, and warned him of the consequences of further misconduct. *Id.* at 458. By comparison, Espinosa's more extensive actions, (taking into account the information that was available to him at the time these events occurred) were not deliberately indifferent. Accordingly, Superintendent Espinosa was entitled to summary judgment based on qualified immunity.

III. The Court of Appeals properly affirmed summary judgment in favor of Crystal City Independent School District.

To hold the Crystal City Independent School District liable for actions of its employees under 42 U.S.C. § 1983, Petitioners must demonstrate, not merely allege, that her constitutional rights were violated through the execution of an official policy of the school district, which has been defined as follows:

> 1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the [district] . . . or by an official to whom the [district] ha[s] delegated policy making authority; or
>
> 2. A persistent, widespread practice of [district] officials or employees which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents [district] policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the district or to an official to whom that body has delegated policy making authority.

Eugene v. Alief Indep. Sch. Dist., 65 F.3d 1299, 1304 (5th Cir. 1995), *cert. denied*, 517 U.S. 1191 (1996).

The school district's policies, adopted by the Board of Trustees, expressly: (1) forbid school district personnel from fraternizing with students and engaging in sexual abuse of

students, (2) require investigation of all reports of sexual harassment or sexual abuse of students, and (3) provide students and parents a complaint process for any allegations of sexual harassment or sexual abuse by district personnel. (2 R 276, 283-289).

In an attempt to prove an unwritten policy inconsistent with the school district's official policy, Petitioners argue that the practice of allowing adult instructors to carry on affairs with minor student(s) was common in the Crystal City School District. However, the summary judgment evidence shows only that unsubstantiated charges of inappropriate conduct were made against four other employees of the school district. There is no indication whether criminal charges were ever filed against any of these individuals. Espinosa testified that one of the investigations was dropped when both parties denied the allegations; another apparently resulted in the teacher's resignation; and the other incidents are not discussed by Espinosa in enough detail to determine either the nature of the allegations or the outcome of the school district's investigation, if any. The mere existence of unproven allegations does not create a question of material fact that the school district had a custom, policy, or practice of violating any of its students' constitutional rights, or that it violated Melissa Martinez's constitutional rights.

Further, the district court was correct that Martinez' allegations against Espinosa are nothing more than rank hearsay. Declarations or affidavits submitted in conjunction with summary judgment proceedings must: (1) be based on personal knowledge, (2) state "facts as would be admissible in evidence" (*i.e.*, evidentiary facts, not conclusion); and (2) "show affirmatively that the affiant is competent to testify to the matters stated therein" (*i.e.*, no inadmissible hearsay

or opinions). FED. R. CIV. P. 56(e); *see also Williamson v. United States Dept. of Agriculture*, 815 F.2d 368, 383 (5th Cir. 1987). The proffered evidence did not meet this test.

Respondent School District was entitled to summary judgment that it was not liable under 42 U.S.C. § 1983, on Petitioner's failure to show that a policy or custom of the School District caused a violation of Melissa Martinez' constitutional rights.

CONCLUSION

For the reasons above stated Respondents respectfully ask this Honorable United States Supreme Court to deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

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